permissible charge by the ILEC and to remove any illegal terms or conditions. In this case, a fresh look period is clearly warranted by the market distortions that have occurred since deregulation of the special access market began. The exorbitant rates charged and anti-competitive terms imposed by ILECs must be corrected as soon as possible in order to ensure that competitive telecommunications options will still be available to individual consumers as well as to small- and medium-sized businesses.

The Commission is authorized to order fresh look provisions in connection with changes to its special access pricing regulations.[134] Importantly, the Commission has recognized that the "existence of long-term access arrangements... raises potential anti-competitive concerns since they tend to 'lock up' the access market, and prevent customers from obtaining the benefits of the new, more competitive interstate access environment."[135] Therefore, the Commission has adopted fresh look provisions in the context of prior changes to its special access pricing regulations, where such provisions would serve the public interest, and would eliminate ongoing use of special access prices

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134 *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Order, 11 FCC Rcd 15499, ¶ 1095 (1996). In the *Local Competition Order*, the Commission declared that it has "ample authority under Section 4(i) of the 1934 Act as well as Section 251 of the 1996 Act, to order this remedy," and that "[c]ourts have held that 'the Commission has the power to prescribe a change in contract rates when it finds them to be unlawful . . . and to modify other provisions of private contracts when necessary to serve the public interest." *Id.* (quoting *Western Union Tel. Co. v. FCC*, 815 F.2d 1495, 1501 (D.C. Cir. 1987)).

135 *Expanded Interconnection with Local Telephone Company Facilities*, Memorandum Opinion & Order, 7 FCC Rcd 7369, ¶ 201 (1992), *recon.* 8 FCC Rcd 7341, 7342-59 (1993) (fresh look to enable customers to take advantage of new competitive opportunities for special access under expanded interconnection), *vacated on other grounds and remanded for further proceedings sub nom. Bell Atlantic Tel. Cos. v. FCC*, 24 F.3d 1441 (1994). *See Expanded Interconnection with Local Telephone Company Facilities*, Memorandum Opinion & Order, 9 FCC Rcd 5154 (1994).

that the Commission determined to be unlawful.[136] To the extent that the Commission adopts new or modified special access pricing regulations in this proceeding, the Commission also should adopt fresh look provisions to ensure that such regulations will benefit all customers.

CONCLUSION

The Commission should expeditiously act to modify existing regulations governing ILEC special access pricing flexibility in the manner described herein.

Respectfully submitted,

XO COMMUNICATIONS, LLC,
COVAD COMMUNICATIONS GROUP, INC.
and NUVOX COMMUNICATIONS

By: _____

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Their Counsel

August 8, 2007

136 *See id.*

Declaration of Michael Clancy
on behalf of Covad Communications Group

REDACTED FOR PUBLIC INSPECTION

REDACTED FOR PUBLIC INSPECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Special Access Rates for Price Cap Local Exchange Carriers	)	WC Docket No. 05-25
	)	
	)	
AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services	)	RM-10593
	)	

DECLARATION OF MICHAEL CLANCY OF COVAD COMMUNICATIONS

I, Michael Clancy, hereby declare under penalty of perjury that the following is true and correct:

1. My name is Michael Clancy. I currently am employed in the position of External Affairs Business Partner for Covad Communications ("Covad"). My business address is 149 Margaret Boulevard, Merrick, NY 11566. My primary job responsibilities for Covad include: (a) interfacing with Verizon and Covad customers as a technical, operational, and policy liaison for Covad for all of the states in the Verizon region; (b) advising Covad on technical issues related to communications networks in the Verizon region; and (c) participating in Covad's Government and External Affairs group on the technical aspects of communications policy.

2. I have been employed in the telecommunications industry since 1970. I began my career at New York Telephone Company as a Switching Equipment Technician. I took on assignments of increasing responsibility, including leading a team that designed private networks for the Securities and Banking Industry while at NYNEX. I left Bell Atlantic in July

1998 as the Director of Interoffice Network Provisioning and Process Management. I began working at Covad in August 1998 as the Vice-President Operations for the New York Metropolitan region. I was responsible for building out the collocation facilities and acquiring network facilities including transport between collocation arrangements. In my current role as Business Partner two specific business areas in which I contribute are partnering with our network planning teams to make decisions about what vendor to use for transport facilities and with our Product teams for new product development.

3. This Declaration is made on behalf of Covad, and in support of the comments filed jointly by Covad, XO Communications, and NuVox Communications in the above-captioned proceeding (the "Joint Comments") to refresh the record and to urge the Commission to eliminate Phase II special access pricing flexibility and to reinitialize incumbent LEC rates for special access.[1]

4. Covad is a facilities-based competitive local exchange carrier ("CLEC") that provides (either directly or indirectly through wholesale partners) voice, data, and digital subscriber line ("DSL") broadband services to residential customers and DSL, voice over internet protocol ("VoIP"), and integrated T1 services to small, medium and large businesses, and to other carriers on a wholesale basis. The company's network covers 44 states.

5. This Declaration is divided into four sections. In Section I, I demonstrate that, where unbundled network element ("UNE") loops are not available at forward looking cost-based rates or via self-supply or competitive supply, incumbent local exchange carrier ("ILEC") special access are not viable economic substitutes. In Section II, I explain that Covad has no

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[1] *In the Matter of Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, *AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM-10593, Public Notice, FCC 07-123 (July 9, 2007).

alternative but to rely on ILEC special access channel mileage when dedicated transport UNEs and equivalent Type I facilities-based offerings are not available. In Section III, I describe how Covad determines the availability of competitive alternatives to ILEC special access. Finally, in Section IV, I describe some of the exclusionary and anticompetitive conditions that ILECs tie to their special access discount plans.

I. Procurement of Loops/Channel Terminations

6. Where UNE loops are not available at forward-looking cost-based rates, Covad lacks real economic alternatives. ILEC special access channel terminations are not an economic substitute because they are priced unreasonably with discriminatory terms and conditions. In addition, neither competitive access provider ("CAP") facilities, nor self-provisioned facilities are available economic substitutes. This is, in large part, because Covad and other CLECs predominantly serve small-to-medium-sized businesses that seldom generate sufficient demand to make self-supply by Covad or a CAP of copper or fiber loop facilities economic. Since obtaining rights of way and leasing duct space or negotiating pole attachments is such an arduous, time-consuming, and expensive proposition, it is never economic for Covad or a CAP to over-build new facilities to provision a single DS1 or DS3. The only environment that provides economic incentive for new investment is when the CAP or CLEC can be assured to acquire a significant economy of scale at a particular address. Demand likely would need to be at or significantly above the three DS3 level at the address for self-supply to be economic. Since small and medium-sized businesses are not usually located in expensive, high- density addresses, it is seldom economic for Covad or a CAP to build new loop facilities to them.

7. As of July 27, 2007, less than **BEGIN CONFIDENTIAL END CONFIDENTIAL** of Covad's loop access needs are met by using competitive alternatives or ILEC special access. While Covad has been able to purchase a very limited number of loops from CAPs, ultimately such purchases failed to be economic. Upon analysis, Covad determined that the competitive providers in most cases were actually purchasing special access services from the ILEC in order to provision the service. While certain factors may allow a competitive provider to obtain special access for these "Type II" loop offerings more cheaply than Covad could (*e.g.*, via mutual discount agreements with the ILEC), the prices offered to Covad generally do not permit Covad to be competitive in the market and generate any return. As a result, Covad generally avoids such arrangements. Simply put, ILEC special access channel terminations, whether purchased directly by Covad, or indirectly as part of a Type II service offering, are priced so far above cost that it is, in all but the rarest of circumstances, uneconomic and uncompetitive for Covad to use them.

8. Based on Covad's experience, fixed wireless service also does not represent a widely available substitute for UNE loops at this time. Covad operates wireless facilities in four markets, covering a relatively small portion of its wireline footprint. It has not utilized fixed wireless to replace its wireline-based services, but rather to provide complementary products that wireless enables. Any deep penetration of the existing loop infrastructure is still only a promising but distant future prospect. Similarly, incumbent LECs have not provided sufficient wireless interconnection rights to permit use of fixed wireless to backhaul traffic from Covad's wireline central office collocations, leaving Covad with access only to ILEC special access where UNE-based transport is not available.

II. Procurement of Dedicated Transport / Channel Mileage

9. In contrast to the market for loops or channel terminations, where competitive supply is virtually non-existent, the market for dedicated transport or channel mileage is characterized by sporadic availability of competitive alternatives. Availability must be determined on a route- and capacity-specific basis. Here, too, the distinction between Type I (via a provider's own facilities) and Type II (via resold special access) offerings is critical, as most Type II offerings are not competitive. Covad's experience is that, in many wire centers where dedicated transport UNEs have been rendered unavailable by non-impairment findings, facilities-based competition does not exist on a substantial number of non-impaired routes. For these routes, Covad has no choice but to rely on ILEC special access that typically is priced considerably higher than the forward-looking, cost-based rates for corresponding UNE dedicated transport.

III. Determining the Availability of Competitive Alternatives

10. In order to incur the lowest possible costs and, in turn offer competitive prices for its own customers, Covad maintains a comprehensive list of all central offices where Covad is collocated with a CAP. As discussed above, Covad's experience is that there are virtually no Type I competitive loop offerings available to serve its target market of small-to-medium-sized business customers. For dedicated transport, a CAP needs to serve both ends of the transport link via its own facilities (Type I) in order to compete effectively. While Covad does provide service from locations where it is not collocated with a CAP able to make available a competitive Type I offering, the extra cost of doing so (using ILEC special access in lieu of UNEs) generally skews Covad's cost structure so that it is unable to effectively compete for

customers. Thus, the lack of competitive alternatives for transport limits the ability of Covad to compete in many markets.

11. Notably, the utility of CAP services to Covad is not solely a question of whether the CAP has a Type I service offering at a competitive price. Economies of scale must also be considered. Before using a CAP, Covad must build interconnection facilities at considerable cost. These capital expenditure requirements can make it uneconomic to use competitive transport, especially when the desired circuit is small or is on an isolated route.

IV. Anticompetitive Terms and Conditions

12. Covad often is unable to avail itself of the modest discounts offered on special access prices by ILECs. This is because, in addition to finding even the discounted prices excessive and uneconomic, Covad is unable to agree to the terms and conditions of such discount plans. For example, discount plans that would require Covad to convert its base of UNEs to special access, in the absence of significant price reductions beyond those discounts presently offered, would raise Covad's overall costs significantly. Percentage of "spend" and growth requirements also are uneconomic and therefore are unacceptable to Covad.

13. The mechanics of certain volume and term discount plans also make it difficult for Covad to realize even modest relief from month-to-month special access plans offered through volume and term commitments. For example, while Qwest offers month-to-month special access pricing, the rates are not at all attractive. All other rate plans require a minimum of a one-year circuit-specific commitment with significant early termination penalties.[2]

[2] Qwest also offers a commitment plan (90%) that allows some "float" but with severe penalties if the total circuits fall below 90% of the ordered number as measured each calendar year. The commitment plan is regional and includes all circuit in all fourteen states of a particular type (DS1, DS3) are automatically captured under the plan, and circuit of the same type cannot be placed in a different rate plan during the four year commitment. All other term plans are on a per circuit basis with significant early

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To decide how to procure (as a last resort) special access service in such situations, Covad reviews its network demand forecasts and attempts to determine if engaging in a commitment contract will align with its plans for network expansion. The benefits of any such offerings must be weighed against the risk that customer demand for Covad's services will decrease prior to the end of the commitment, leaving Covad obligated to continue to pay for the special access circuits for the term of the agreement despite the loss of revenue from customers. Often, this calculation results in Covad limiting service offerings as special access pricing inputs would make it uneconomic for Covad to provide competitively priced services to its target market of small-to-medium-sized business customers.

14. This concludes my Declaration.

Michael Clancy
Covad Communications

Dated: August 8, 2007

termination fees. Early termination penalties for DS3 circuits are especially high – 100% of MRCs first year; 70% MRCs for all later years.

Declaration of Keith Coker
on behalf of NuVox Communications

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Special Access Rates for Price Cap Local Exchange Carriers	)	WC Docket No. 05-25
	)	
	)	
AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services	)	RM-10593

DECLARATION OF KEITH COKER
OF NUVOX COMMUNICATIONS

DECLARATION OF KEITH COKER

I, Keith Coker, hereby declare under penalty of perjury that the following is true and correct:

1. My name is Keith Coker and I am Chief Technology Officer for NuVox Communications ("NuVox"). My business address is 301 N. Main Street, Suite 5000 Greenville, SC 29601. My primary job responsibilities are planning and managing NuVox's network.

2. This Declaration is made on behalf of NuVox, and in support of the initial comments filed jointly by XO Communications Inc., Covad Communications Group and NuVox Communications in the above-captioned proceeding (the "Joint Comments"), refreshing the record and urging the Commission to eliminate Phase II

special access pricing flexibility and to reinitialize incumbent local exchange carrier ("ILEC") rates for special access.[1]

3. NuVox is a competitive local exchange carrier providing numerous services including local voice and data, domestic and international long distance, dedicated high-speed Internet access and voice over Internet protocol ("VoIP"), generally in bundled service offerings. NuVox operates in 16 states, including each of the states in the former BellSouth region and several of the states in the pre-BellSouth merger AT&T region. NuVox provides innovative and cost effective communications services to small and medium-sized businesses.

4. This Declaration is divided into three sections. In Section I, I demonstrate that where unbundled network element ("UNE") loops are not available at forward looking cost-based rates, self-supply, competitive supply, and ILEC special access are not viable economic substitutes. In Section II, I explain that NuVox has no alternative but to rely on ILEC special access channel mileage when EELs or dedicated transport UNEs and equivalent Type I facilities-based offerings are not available. In Section III, I discuss the effects of higher prices for special access on NuVox and its end users.

I. Procurement of Loops/Channel Terms

5. Where unbundled network elements are not available at forward looking cost-based rates, NuVox generally is unable to find economic alternatives from other competitive providers. It then faces an unfortunate choice: either use unreasonably

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[1] *In the Matter of Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, *AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM-10593, Public Notice, FCC 07-123 (July 9, 2007).

priced above-cost special access service from an ILEC or not serve the end user. Currently, less than 1% of NuVox's loop access needs are met through the use of circuits or facilities obtained from competitive providers. Thus in all but the rarest of circumstances, NuVox is forced to use ILEC special access when high capacity loops are not available as UNEs priced at forward looking cost-based prices under section 251 or at just and reasonable prices under section 271. Section 271 loop offerings – those that differ from special access in terms of price – are presently available to NuVox in the State of Georgia and no where else within NuVox's service territory.

II. Procurement of Loop/Transport Combinations (EEL Equivalents)

6. Similar to the market for loops and channel terminations, there are almost no competitive alternatives to ILEC special access services for the provision of loop and interoffice transport combinations. Currently, less than 1% of NuVox's loop and interoffice transport combination needs are met by using competitive alternatives.

III. The Effects of Higher Prices for Special Access

7. Implementation of the FCC's *Triennial Review Remand Order* non-impairment thresholds has resulted in the replacement of a number of UNE circuits with unreasonably priced ILEC special access circuits because NuVox cannot obtain circuits from competitive providers. With decreased availability of bottleneck last mile facilities at forward looking cost-based prices, NuVox's costs and cost structure are raised, resulting in a concurrent need to raise prices and revenues to cover such increased costs. Higher prices for critical bottleneck customer access facilities significantly reduce the geographic availability of competitive services while, at best, moving the focus of competitive local exchange carriers ("CLECs") "up-market." This means that "lower

end" (*i.e.*, those with smaller needs) small-business customers may get left behind, as products and marketing are shifted to focus on mid-to-large businesses who generally produce greater average monthly revenue.

8. For example, in many markets NuVox can provide bundled voice and broadband service via DS1 loops or DS1 loop/transport combinations to customers with as few as six voice lines plus Internet service if loop access facilities are available as UNEs. Where NuVox must rely on ILEC special access in lieu of UNE loops and EELs, that set of services generally cannot be provided profitably to that size of customer, or any size of customer, because of the excessively high prices of ILEC special access and the near total lack of alternatives. Indeed, unavailability of UNEs stemming from non-impairment findings has caused NuVox to discontinue actively marketing certain services in certain wire centers where DS1 customer access facilities can now only be obtained by leasing them from the ILECs as special access.

9. Thus, recent non-impairment findings have forced NuVox into a corner, increasing its reliance on over-priced and typically uneconomical special access. This has resulted in market retrenchment, as NuVox must, in certain markets, shift its focus toward larger business customers that produce greater average monthly revenue. For small business, competitive choice for communications services, including but not limited to broadband services (*e.g.*, via bundled offerings), is limited and in some cases eliminated, by NuVox's forced reliance on excessively and unreasonably priced ILEC special access and complete lack of access to bottleneck facilities – whether leased from an ILEC or competitor.

10. This concludes my Declaration.

Keith Coker
Chief Technology Officer
NuVox Communications

Dated: August 8, 2007

Declaration of Ajay Govil
on behalf of XO Communications, LLC

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
Special Access Rates for Price Cap Local Exchange Carriers	)	WC Docket No. 05-25
AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services	)	RM-10593

DECLARATION OF AJAY GOVIL
ON BEHALF OF XO COMMUNICATIONS, LLC

I, Ajay Govil, hereby declare under penalty of perjury, that the following is true and correct:

1. I am employed by XO Communications, LLC ("XO") as Director of Transport Architecture & Technology. My business address is 11111 Sunset Hills Road, Reston, Virginia 20190. My primary job responsibilities include providing overall direction for the evolution of XO's network from both a technical and financial perspective. I specify what technology is deployed and how we allocate our capital funds to expand the XO network. Previously I was employed by Qwest Communications.

2. Based in Reston, Virginia, XO owns and operates fiber optic rings with associated switching and fiber optic equipment that serve 75 metro area markets in 26 states. XO now has almost **BEGIN CONFIDENTIAL END CONFIDENTIAL** Class 5 circuit switches (Nortel DMS500 and Lucent 5ESS) and VoIP softswitches (Sonus). XO also has deployed **BEGIN CONFIDENTIAL END CONFIDENTIAL** route miles of its own fiber optic facilities composed of **BEGIN CONFIDENTIAL END CONFIDENTIAL** fiber miles

of metro fiber transport facilities. The company offers a complete suite of telecommunications services including local and long distance voice, Internet access, Virtual Private Networking, Ethernet, Wavelength, Web Hosting and integrated voice and data services. Services are provided to more than **BEGIN CONFIDENTIAL END CONFIDENTIAL** business customers by means of a combination of the company's own facilities, Incumbent Local Exchange Carrier ("ILEC") unbundled network elements ("UNEs"), facilities and services purchased from other competitive telecommunications carriers, and through XO's Tier One Internet peering relationships. We also purchase Special Access services from ILECs where we have no other alternatives.

I. PURPOSE AND SUMMARY

3. The purpose of this Declaration is to explain the critical importance to XO of DS-1 and DS-3 high-capacity loop and interoffice transport facilities obtained from the ILECs. I describe how XO utilizes ILEC DS-1 and DS-3 loops to provide last mile connectivity to buildings passed by our SONET metro fiber optic rings. In Part II hereof, I discuss how critical the availability of economic DS-1 and DS-3 loop facilities is to XO's ability to provide competitive telecommunications services. Then, in Part III, I will explain how XO decides to build its own loop facilities into buildings, and show how it normally is not feasible for XO or other CLECs to construct their own wireline DS-1 and DS-3 facilities. In Parts IV and V, I demonstrate that wireless loop technology and cable television systems are not adequate substitutes for the ILECs' wireline DS-1 and DS-3 loops. In Part VI, I explain why it is necessary for XO to purchase DS-1 and DS-3 transport from the ILECs on most interoffice routes. Finally, in Part VII, I explain why resale of ILEC Special Access services at current non-cost-based price levels cannot sustain competitive entry.

4. In this Declaration, I also make clear that XO is a facilities-based CLEC that is committed to deploying its own facilities wherever such construction can be economically justified. We believe that the key to long-term success lies in the installation and use of our own facilities wherever reasonably possible. Let there be no doubt, we prefer *not* to rely upon using the facilities of our principal competitors – the ILECs – to fill out our networks. But as was made clear by the bankruptcies experienced by most facilities-based CLECs over the past several years, constructing facilities based "on spec," where customer demand is not assured, is an unsustainable business proposition. This is especially true now, as the capital markets are simply "closed" to supporting facilities construction where efficient near-term use is not clearly demonstrated. Thus, we simply must have access to just and reasonably priced high-capacity ILEC facilities while we expand our networks and build our customer base.

II. HIGH-CAPACITY LOOPS ARE ESSENTIAL TO XO

5. XO's base of more than **BEGIN CONFIDENTIAL END CONFIDENTIAL** customers is primarily comprised of small and medium-sized businesses. These businesses normally aggregate loops on their premises with a PBX or Key System. The vast majority of such customers **BEGIN CONFIDENTIAL END CONFIDENTIAL** subscribe to services which require that they connect to our backbone network over T-1 or Integrated Access PRI facilities. As a general matter, small and medium sized business customers are connected to the XO network with DS-1 loops, while we use higher capacity DS-3 and OCn facilities to serve large corporate users and other carriers. XO offers a suite of services (Business Trunks, ISDN PRI, Integrated Access, etc.) that are ideally suited for any small or growing company or office location with moderate bandwidth (128 Kbps to 1.544 Mbps) requirements. Such customers often elect an integrated access product, in which the customer's local, long distance and Internet access are delivered over the same loop facilities.

Whenever the customer requires at least 6 lines/trunks with a minimum of 14 channels, XO provides the service via DS-1 access. Since these are by far our most popular products with customers, we estimate that approximately **BEGIN CONFIDENTIAL END CONFIDENTIAL** of the loops used by XO to connect to our customers are at the DS-1 level.

6. From the foregoing, it is apparent that DS-1 and DS-3 level loop connectivity to customers is absolutely essential to XO's ability to deliver services to our business customers. We currently obtain these high-capacity loop facilities in a number of ways. Sometimes we build our own fiber optic facilities into a building and create a DS-1 or DS-3 channel connecting to our backbone network. Note that we do not build stand-alone DS1 or DS3 Channels. We also occasionally purchase loop facilities from other competitive carriers. However, as I will explain later in this Declaration, the availability of these preferred options is extremely limited. Thus, in the vast majority of instances we must rely upon the use of ILEC loop facilities to connect to customers at the DS-1 or DS-3 level.

7. The business services market is extremely competitive. We compete for customers based in large part upon our ability to provide superior service levels, new service options, route redundancy and attention to customer service. However, these service differentiating features are not sufficient to make sales unless we also are competitive on price. The bottom line is that XO is normally unable to convince customers to subscribe to its services unless it offers a lower price than the ILEC for comparable services. The need to be the low-cost alternative is a simple fact of life when you are competing against an incumbent monopoly with established brand name recognition.

8. Our business services typically are offered on very tight operating margins. Unlike the ILECs, we have no monopoly services that can be used to cross subsidize unprofitable

operations elsewhere in our business. Thus, we are unable to price below cost on any of our *significant service offerings and remain in business. Thus, it is imperative that we control costs,* and that critical inputs to our cost of service not exceed similar costs incurred by our primary competitors — the ILECs.

9. As I explain in Part III hereafter, it simply is not economic for XO to build its own DS-1 loop facilities. Similarly, it is not economically feasible for XO to consider construction of DS-3 facilities unless it has at least 3 DS-3s of capacity under contract. Thus, in the vast majority of cases, we must purchase DS-1 or DS-3 loop facilities from the ILECs to serve our large base of business customers. Where wire centers remain impaired, XO typically has been able to economically purchase ILEC UNEs. But where wire centers have been deemed non-impaired, XO cannot obtain UNEs and is forced to order such services out of the ILEC Special Access tariffs. But as I shall explain later in Part VII hereof, use of ILEC Special Access to provide local telecommunications services generally is not a sensible economic proposition. Because ILEC Special Access rates are not set based on any cost-based pricing principles, and ILECs commonly build enormous profit margins into their Special Access rates, it is extremely difficult for XO to price retail services competitively when it must use ILEC Special Access services to connect to customers. Thus, in the majority of cases, and whenever UNEs are still available to XO, we rely upon the availability of ILEC DS-1 and DS-3 loop UNEs priced based on total element long-run incremental cost (TELRIC) costing principles to serve our customers economically. It is only when we have cost-based ILEC DS-1 and DS-3 loop facilities available that we can compete for customers based on a level economic playing field.

10. Notably, the DS-1 and DS-3 loops that we lease from ILECs are of two types. We use both UNE Loops and Enhanced Extended Links/Loops ("EELs"). In both cases, XO is required to establish collocation arrangements in ILEC central offices to obtain access to these

loop facilities. XO currently operates approximately **BEGIN CONFIDENTIAL END CONFIDENTIAL** *such collocation arrangements in 75 markets across the country. Such* collocation arrangements are very costly. We estimate that XO incurs approximately **BEGIN CONFIDENTIAL END CONFIDENTIAL** over the first three years at each collocation site. These costs include building the collocation space, recurring charges for rent and power, plus the costs of purchasing and installing equipment to outfit the collocation space.

III. THUS, XO RELIES ON THE AVAILABILITY OF COST-BASED DS-1 AND DS-3 LOOP UNES TO SERVE MOST OF OUR CUSTOMER BASE. [XO CANNOT BUILD ITS OWN WIRELINE HIGH-CAPACITY LOOP FACILITIES

11. XO is a facilities-based CLEC. We build our own fiber optic transmission networks and install our own switching equipment wherever it is economically feasible for us to do so. We have invested very heavily in constructing such network facilities. Indeed, we have spent approximately **BEGIN CONFIDENTIAL END CONFIDENTIAL** to establish metro rings to serve 75 metropolitan areas in 37 U.S. cities, and currently operate **BEGIN CONFIDENTIAL END CONFIDENTIAL** switches and have deployed metro area networks consisting of more than **BEGIN CONFIDENTIAL END CONFIDENTIAL** route miles of fiber optic lines composed of **BEGIN CONFIDENTIAL END CONFIDENTIAL** fiber miles of metro fiber transport facilities .

12. Whether the service provided to customers is switched or dedicated, the loop facility is the most basic component of the network required to serve a particular customer. However, the economics of building loop facilities is fundamentally different than the economics of deploying switching and transport facilities. When XO installs switches and transport facilities, those network components are used in common (and paid for) by many customers. By contrast, a loop facility is dedicated to the use of one customer or in limited instances a very small group of

customers. Given the very high cost of facilities construction, it can be financially feasible to build transport and switching facilities in areas where there is adequate aggregate potential demand in place, whereas for it to make financial sense to build loop facilities you must have the assurance that a particular customer, or group of customers will contract with you to provide very high-capacity services over an extended period of time.

13. By way of background, when XO constructs a Metro Fiber "MF" Ring, it first identifies geographically proximate commercial buildings that house as many potential customers as possible; if such customers are located in buildings that are reasonably close together, we attempt to design and build the MF Ring to pass directly by as many of those buildings as possible. Buildings that are directly on XO's MF Ring can be served with our own loop facilities. In some markets, as a result of growth or capacity issues, XO may build a smaller second MF Ring. In such cases, XO not only evaluates the building location of potential customers, but it also evaluates the buildings that house its principal existing customers in an attempt to place as many buildings on the MF Ring as possible. XO's MF Ring consists of interoffice fiber optic facilities deployed between XO's switch locations and the ILEC central offices, and collocation equipment installed in the ILEC central offices. Other than customers in the limited numbers of buildings on the XO MF Ring, XO serves its customers by ordering loops (UNE loops whenever available) from the XO collocation space at the ILEC central office to the end user. While XO has constructed MF Rings in most of the market areas in which we provide local exchange services, deploying MF Rings is extraordinarily expensive and thus does not occur on a consistent basis. Consequently, connection to customers via an MF Ring is the exception, not the rule, and simply is not an economic alternative for the vast majority of potential customers.

14. The final component is the building lateral. The vast majority of commercial buildings are NOT located on our MF Rings. Thus, if XO wishes to serve customers located in those buildings with our own loop facilities, we must construct a building "lateral," connecting the building to our MF Ring. Specifically, we must trench, install conduit, and pull fiber between the MF Ring and the building to be served; and then we must obtain and outfit equipment space in the building itself.

15. As noted, merely passing nearby a customer facility does not enable us to actually provide service to the customer. We estimate that there are **BEGIN CONFIDENTIAL END CONFIDENTIAL** commercial office buildings in the United States, and that around **BEGIN CONFIDENTIAL END CONFIDENTIAL** of those buildings are located in the cities where XO operates fiber ring. However, those **BEGIN CONFIDENTIAL END CONFIDENTIAL** buildings are unreachable, regardless of how close they are to the MF ring, unless they are physically connected to it. Today, our MF Rings connect to only **BEGIN CONFIDENTIAL END CONFIDENTIAL**, or approximately **BEGIN CONFIDENTIAL END CONFIDENTIAL** of the potential market.

16. The construction of laterals to connect office buildings to the XO network is extremely difficult, time consuming and costly, even when adding buildings to our MF Rings that are located in close proximity to our MF Rings. The average XO building lateral is 500 feet long and on average costs **BEGIN CONFIDENTIAL END CONFIDENTIAL** in outside plant construction and building access plus **BEGIN CONFIDENTIAL END CONFIDENTIAL** for the associated electronics, totaling **BEGIN CONFIDENTIAL END CONFIDENTIAL** per building assuming no significant space conditioning or internal end user wiring problems. It is important to realize that CLECs have no absolute right to build into the